ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY D. VAUGHT, JUDGE

DIVISION IV

CACR06-1092

May 2, 2007

OCTAVIO RODRIGO
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

APPEAL FROM THE CONWAY COUNTY CIRCUIT COURT
[CR2005-126]

HON. PAUL DANIELSON, CIRCUIT JUDGE

DISMISSED

Appellant Octavio Rodrigo entered a conditional guilty plea to possession of a controlled substance with the intent to deliver and was sentenced to twelve years in prison. He appeals from the denial of his motion to suppress evidence obtained during the search of his vehicle, arguing that he was subjected to an illegal stop and detention. Although we are troubled by the facts of this case, we must dismiss the appeal because Rodrigo did not appeal from the judgment entered pursuant to his guilty plea.

Rodrigo's conditional guilty plea was entered on June 13, 2006. On the same day a judgment and commitment order was entered against him. However, this order was not included in the addendum of Rodrigo's appeal. On July 11, 2006, the trial court entered an amended judgment and conviction order reflecting the terms of Rodrigo's conditional guilty plea. He did include a copy of this second order in the addendum to his brief.

Rodrigo filed his notice of appeal on June 28, 2006. His notice of appeal states that Rodrigo "is appealing the adverse rulings on his Motion to Suppress herein." Unfortunately, Rodrigo's appeal notice makes no reference whatsoever to either of the judgment and commitment orders entered against him. Therefore, despite the fact that the State did not challenge the propriety of Rodrigo's appeal, we must first address—sua sponte—our jurisdiction to consider the merit of his claims. *See Hill v. State*, 81 Ark. App. 178, 10 S.W.3d 84 (2003).

Our case law is clear that defendants desiring to appeal adverse rulings must appeal from the judgment of conviction. *See, e.g.*, *Hill v. State*, 361 Ark. 352, __ S.W.3d ___ (2005). Indeed, Rule 24.3(b) states that the defendant may enter a conditional plea of guilty "reserving in writing the right, on appeal from the judgment, to review an adverse determination of a pretrial motion to suppress evidence ... ." Ark. R. Crim. P. 24.3(b). In *McDonald v. State*, 354 Ark. 680, 124 S.W.3d 438 (2003) (*McDonald I*), our supreme court held that "Rule 24.3(b) requires an appeal from the judgment, not the order denying the motion to suppress." *Id.* at 680–81, 124 S.W.3d at 438. The court further noted that a notice appealing the order denying the motion to suppress was "defective and of no effect." *Id.*

In this case, although common sense would dictate that Rodrigo is indeed appealing his conviction and is seeking a reversal and remand in this appeal, we cannot ignore supreme court precedent. Because Rodrigo's notice of appeal states that he appeals from the adverse rulings on his motion to suppress and not from his judgment of conviction, we are deprived

of jurisdiction to hear his appeal. *Webb v. State*, 94 Ark. App. 234, __ S.W.3d ___ (Feb. 15, 2006).

However, Rodrigo is not without a remedy. In *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004) (*McDonald II*), our supreme court clarified its treatment of motions for rule on clerk and motions for belated appeals. The court noted that there were only two possible reasons for an appeal not being timely perfected: either the party or attorney filing the appeal was at fault, or there was "good reason." *McDonald*, 356 Ark. at 116, 146 S.W.3d at 891. The court explained:

> Where an appeal is not timely perfected, either the party or attorney filing the appeal is at fault, or there is good reason that the appeal was not timely perfected. The party or attorney filing the appeal is therefore faced with two options. First, where the party or attorney filing the appeal is at fault, fault should be admitted by affidavit filed with the motion or in the motion itself. There is no advantage in declining to admit fault where fault exists. Second, where the party or attorney believes that there is good reason the appeal was not perfected, the case for good reason can be made in the motion, and this court will decide whether good reason is present.

Id. (footnote omitted). Accordingly, although we dismiss the appeal, we do so without prejudice so that Rodrigo may, if he so chooses, petition our supreme court for the right to file a belated appeal.

Appeal dismissed.

GLADWIN and BIRD, JJ., agree.